

2003 DRAFTING REQUEST**Bill**Received: **09/16/2002**Received By: **dkennedy**Wanted: **As time permits**

Identical to LRB:

For: **Peggy Krusick (608) 266-1733**By/Representing: **Herself**This file may be shown to any legislator: **NO**Drafter: **dkennedy**

May Contact:

Addl. Drafters:

Subject: **Health - long-term care**Extra Copies: **RLR**Submit via email: **YES**Requester's email: **Rep.Krusick@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Authorize long-term care ombudsman program to enter residential care apartment complexes

Instructions:

See Attached

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At
Intro.

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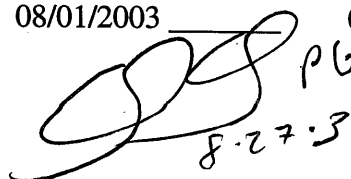
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WISCONSIN STATE ASSEMBLY



PEGGY KRUSICK
STATE REPRESENTATIVE

TO: Debora Kennedy
FROM: Peggy Krusick
DATE: September 6, 2002
SUBJECT: Bill Drafting Request

Please draft a bill to allow the ombudsman program to enter the state's residential care apartment complexes.

Legislative Council Attorney Dick Sweet says this would require amending the definition of "long-term care facility" in s. 16.009(1)(em), Stats. to include a residential care apartment complex, as defined in s. 50.01(1d), Stats.

Dick says that under s. 16.009(4)(b), Stats., the ombudsman program has access to long-term care facilities and residents and certain records; by amending the definition of "long-term care facility" to include RCACs, they will also have access to those facilities and residents and records of those facilities.

Just call with any questions. Thanks.



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0290/1

DAK:.....

Jld

2003 BILL

Gen

- 1 AN ACT ...; relating to: authorizing access by the long-term care ombudsman or
2 his or her representative to a client or resident in a residential care apartment
3 complex.

Analysis by the Legislative Reference Bureau

Under current law, the long-term care ombudsman or his or her designated representative may enter a long-term care facility at any time, without notice, and have access to clients and residents of the facility. "Long-term care facility" is defined to be a nursing home, a community-based residential facility, a place in which care is provided under a continuing care contract, a swing bed in an acute care or extended care facility, or an adult family home. The ombudsman or representative may communicate in private with a client or resident, review records with consent of the client or resident or his or her legal counsel, and have access to records of the long-term care facility or of (DHFS) concerning regulation of the long-term care facility.

Also under current law, residential care apartment complexes are licensed and otherwise regulated by DHFS. A "residential care apartment complex" is defined as a place where five or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen with a stove, and individual bathroom, sleeping and living areas, and that provides to a resident not more than 28 hours per week of supportive, personal, and nursing services.

This bill expands the definition of a long-term care facility, for purposes of activities by the long-term care ombudsman or his or her designated representative, to include resident care apartment complexes.

BILL

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.009 (1) (em)^x of the statutes is created to read:

16.009 (1) (em) 7. A residential care apartment complex, as defined in s. 50.01

(1d).

(END)

Kennedy, Debora

From: Moran, Christian
Sent: Tuesday, March 25, 2003 5:40 PM
To: Schroeder, Susan
Cc: Morgan, Charlie; Sweet, Richard; Stoller, Jessica; Kennedy, Debora; Potaracke, George
Subject: April 1 Meeting

Sue:

As I mentioned in my voice mail, we're hoping to set up a meeting with you on Tuesday, April 1. The topic will be drafting legislation in response to the Audit Bureau's review of nursing home and assisted living regulation.

People invited to the meeting will include Charlie Morgan and Jessica Stoller of the Fiscal Bureau; Dick Sweet of the Legislative Council; Debora Kennedy of the Legislative Reference Bureau; George Potaracke of the Board on Aging, and other aging advocates.

More specifically, Peggy's interested in drafting a bill that would:

- require annual and unannounced inspections of assisted living facilities
- establish minimum nursing qualifications for inspectors of assisted living facilities
- allow ombudsmen to investigate complaints in RCACs.

Obviously given the budget deficit, it's necessary to draft a bill that requires no GPR dollars. Therefore, Peggy asked the Fiscal Bureau to prepare a memo discussing possible non-GPR funding sources to support more assisted living inspectors and ombudsmen positions. That memo is attached for your information.

Information we'd appreciate from the Department before a meeting includes:

- an estimate on how many more inspectors would be needed to inspect assisted living facilities annually, and the cost of supporting these positions
- recommendations on nursing qualifications for inspectors of assisted living facilities
- an estimate on how much additional forfeiture revenue would be generated if assisted living facilities were inspected annually

Thanks in advance for your help. We look forward to meeting with you on this issue.

Christian
Peggy Krusick's office
6-1733



00012.pdf

3/18/03 Mtg. w/ Rep Krusick, Dick Sweet, Charlie Morgan, Christian, George Potarche Sue Schroeder - DHFS

① Annual inspections of RCACs
Ohio

② Graduated inspection process - if find problems, increase inspections -

Ideal: teams of social workers + RN's (or LPN's?)
Qualifications?

③ Ombudsmen have authority to investigate problems 0290/1

④ George's proposals

(a) 1⁰⁰/2000 clients = 3.0 FTEs

(b) Fund by add on to licensing fee \$28/unit

Any federal match available? Sue Schroeder?
May be relatively few MA people.

Does DNR require up front payment that is refunded
if ACT finds not guilty

all facilities:

NHs + RCACs + AFHs + get refunded if court appeal says okay
Alternative (Dick Sweet): pay fine if ACT finds guilty

Surcharges on forfeitures (Budget has 6% on wh's \$ = 1 FTE
Could lower penalties + put on large surcharge

(d) 5000 + 5000 - Surcharge = to amt. of forfeiture

NHs + RCACs + AFHs use \$ for increased inspection of NHs
use GPR now used for " " "

(f) Jan 1, 04 - Positions authorized. then

Kennedy, Debora

From: Moran, Christian
Sent: Wednesday, March 19, 2003 1:53 PM
To: Kennedy, Debora
Subject: Information for Tuesday's meeting

Debora--

Again, the purpose of Tuesday's meeting is to discuss possible additions to LRB 0290/1, which would allow ombudsmen into RCACs, and funding sources for the bill.

The attachments are:

--A fiscal bureau memo that discusses possible non-GPR funding sources to support more inspectors in long-term care facilities and provide ombudsmen in these facilities.

--Peggy's testimony for an Audit Committee hearing on the Audit Bureau's recent review of the state's regulation of nursing homes and assisted living facilities. (Here's the link to the full report: <http://www.legis.state.wi.us/lab/reports/02-21full.pdf>) This testimony outlines the key measures Peggy would like to include in legislation to address the issues raised by the audit. The feasibility of including these measures in LRB-0290/1 are what we will discuss Tuesday.

Hope this information is useful. Just call with any questions.

I'll call to confirm Tuesday's meeting as soon as I hear back from Fiscal Bureau.

Christian
6-1733



00012.pdf



Krusick(audit
hearing)2-5-03.p...

WISCONSIN STATE ASSEMBLY



PEGGY KRUSICK
STATE REPRESENTATIVE

TO: Members, Joint Legislative Audit Committee
FROM: Peggy Krusick
DATE: February 5, 2003
SUBJECT: Written Testimony on Audit of Nursing Home and Assisted Living Facility Regulation

The Legislative Audit Bureau is to be commended for its excellent evaluation of the regulation of Wisconsin nursing homes and assisted living facilities.

As primary requester of the audit, I am very pleased with the quality of the final report. The findings confirm the results of the August 2001 Milwaukee Journal Sentinel investigation of the state's long-term care system that prompted my asking for this audit. I thank the Committee for approving my request.

It's clear from the Audit Bureau's evaluation that big improvements are needed in the oversight of Wisconsin's nursing homes and assisted living facilities.

Therefore, I plan to work with the Audit Committee, DHFS, aging advocates, the long term care industry and all other interested groups on a reform package that addresses the serious issues raised in the audit. Of course, given state budget constraints, all reforms implemented right now will need a zero fiscal note. To meet this requirement, I am consulting with the Fiscal Bureau on funding options that are budget neutral (\$0 GPR).

The Audit Bureau's report, including its excellent recommendations, will form the framework for whatever statutory and rule changes are necessary to ensure that our most vulnerable residents get the quality care they deserve. Key measures being considered so far include:

- requiring more frequent and unannounced inspections of assisted living homes
- giving the state ombudsman the authority and resources to investigate complaints from residents of residential care apartment complexes
- increasing the number of inspectors for assisted living homes
- establishing minimum nursing qualifications for inspectors of assisted living homes
- establishing penalties for non-payment of nursing home forfeitures

In closing, I again thank the Audit Committee for approving this audit and appreciate the hard work the Audit Bureau staff put into preparing the final report. I am confident their effort will result in measures that ensure quality long-term care for Wisconsin residents, regardless of whether they live in a nursing home or assisted living facility.



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

February 4, 2003

TO: Representative Margaret Krusick
Room 128 North, State Capitol

FROM: Jessica Stoller and Yvonne Onsager

SUBJECT: Long-Term Care Facilities -- Potential Funding Sources to Increase Inspection and Ombudsman Activities

In response to your request, this memorandum discusses the feasibility of using non-GPR funding sources to support additional positions to inspect long-term care facilities and provide ombudsman services to residents of these facilities.

In 2000-01, the Department of Health and Family Services (DHFS), Bureau of Quality Assurance was authorized approximately 173.0 full-time equivalent positions, located in the Department's regional offices, to conduct on-site inspections and to investigate complaints relating to nursing homes and assisted living facilities. These staff are currently supported by GPR, license and certification fee revenue, and federal funds available under medical assistance (MA) and the federal social services block grant

Federal Civil Money Penalties. Federal civil money penalties are fines imposed for violations of federal nursing home regulations. Revenue from federal civil money penalties may be provided to the state, the federal government or both, depending on whether the nursing home is certified to receive funding through MA, Medicare, or both. DHFS retains all revenue from this source for violations incurred by MA-certified facilities. However, if a facility is certified to provide services to both Medicare and MA enrollees, the penalty revenues are divided according to the proportionate share of beds occupied by MA- and Medicare-funded residents. The state received \$644,900 in federal civil money penalties in 2001-02.

All revenue the state receives from federal civil money penalties is credited to an appropriation that funds activities to protect nursing home residents. Under current federal law, civil money penalties can be used to: (a) operate a nursing facility while a correction or closure is pending; (b) assist in relocating residents to other facilities; (c) reimburse residents for items lost

while under the care of a facility; and (d) fund certain pilot projects that are approved by the federal government.

In 2002-03, DHFS budgeted \$150,000 of this revenue to support its "value-added technical assistance project." Under this project, DHFS provides technical assistance to nursing homes to enable them to meet and surpass state and federal health and safety standards. The rest of this revenue was budgeted to support DHFS costs incurred for placing nursing homes with serious health and safety problems in receivership.

DHFS has indicated that it would be possible to use a portion of these funds to support activities that would qualify as "resident protection efforts," which could include supporting additional inspector and ombudsman positions.

State Forfeiture Assessments. Forfeitures are assessments on facilities that violate standards established in state, rather than federal, law. The forfeitures are collected by DHFS and submitted to the State Treasurer for deposit in the common school fund. In 2001-02, approximately \$1.6 million in nursing facility and \$214,700 in assisted living forfeitures were issued. However, the actual amount DHFS collects in any fiscal year may be significantly less than the amount due for several reasons. First, some assessments may not be collected from facilities that file for bankruptcy. Second, a payment delay and arrangement may be established that does not require the facility to make full payment of the forfeiture amount within the same year the forfeiture was assessed. Third, forfeitures or deficiencies that are under appeal do not need to be paid within the statutory time limit (10 days). Finally, if a facility home pays a forfeiture within 10 days and waives its rights to appeal, its required forfeiture amount is reduced by 35%.

Under the requirements of Article X, Section 2 of the Wisconsin Constitution, all revenue deposited to the common school fund, including forfeiture assessments on nursing homes, supports grants to school districts to purchase instructional materials and library books and loans to local governments. The funding is allocated to school districts based on their proportionate populations.

Based on a 2001 review of judicial rulings, Joint Legislative Council staff identified several limitations that restrict the Legislature's ability to direct forfeiture revenue from the common school fund. In summary, the Council's staff concluded that the Legislature may only divert nursing home forfeiture revenues away from the common school fund to support the actual costs of prosecuting an offense, subject to judicial standards of reasonableness. In a December, 2002, evaluation of the state's regulation of nursing homes and assisted living facilities, the Legislative Audit Bureau indicated that the Legislature could "consider amending current statutes so that a portion of the nursing home and assisted living facility forfeitures assessed is directed to the Department [DHFS], rather than the common school fund."

If a statutory change were made to divert a portion of these revenues to support the assessment collection function, current staff that perform that function could be reallocated to increase the regulatory function.

License and Certification Revenue. DHFS collects revenue to support its regulation function by charging facilities a flat certification fee or a fixed amount per licensed bed that varies according to the type of facility. For instance, nursing homes are required to pay \$6 per licensed bed annually, while other inpatient health care facilities, such as hospitals, pay \$18 per licensed bed. Adult day care centers pay a fixed \$100 fee every two years; while community-based residential facilities are charged \$306 plus \$39.60 per resident every two years. Licensing and support service revenues currently support health facility plan and rule development activities, facility accreditation, capital construction and remodeling plan reviews, technical assistance, and associated licensing and support costs. The following table lists select licensing and support revenues from 1997-98 to 2001-02.

**Licensing and Support Revenues
1997-98 to 2001-02**

	<u>1997-98</u>	<u>1998-99</u>	<u>1999-00</u>	<u>2000-01</u>	<u>2001-02</u>
Assisted Living Facilities	\$212,500	\$344,600	\$667,400	\$742,000	\$1,709,400
Home Health Agencies	164,200	124,200	405,200	199,000	153,500
Health Facilities	140,200	360,900	675,600	365,800	606,600
Hospice Fees	<u>18,700</u>	<u>19,300</u>	<u>13,100</u>	<u>22,400</u>	<u>41,100</u>
Total	\$535,700	\$849,000	\$1,761,400	\$1,329,200	\$2,510,508

*Excludes caregiver background checks and health facility plan review revenues.

Additional revenue could be generated to support facility inspector and ombudsman positions by increasing the current licensing and certification fees assessed to long-term care facilities.

In its December, 2002, evaluation of the Department's regulation of nursing homes and assisted living facilities, The Legislative Audit Bureau notes that the fees for CBRFs and adult family homes were increased by 80% under 1999 Wisconsin Act 9 (the 1999-01 biennial budget act). Further, as part of its 2001-03 budget request, DHFS requested an additional 60% increase in licensure fees for CBRFs and adult family homes and the same increase for adult day care facilities. At the time, DHFS estimated that the proposed rate increase would generate an additional \$685,700 to fund an additional 9.0 inspector positions. The Department's request was not included in the Governor's budget recommendations or considered by the Legislature during its budget deliberations.

Income Augmentation Funds. Income augmentation funds are unanticipated federal funds DHFS receives under Title IV-E (foster care), XIX (Medicaid), and XVIII (Medicare) of the federal Social Security Act as reimbursement for costs that were initially paid with state or local revenue, or revenue from one of these sources that would not otherwise have been available had it not been

for activities conducted to augment federal income. Beginning in 2001-02, income augmentation funds also include additional federal MA-matching funds the state receives as reimbursement for targeted case management services provided to children, who are not eligible under Title IV-E, in out-of-home care. These federal MA-matching funds are deposited in the DHFS income augmentation appropriation and are referred to as targeted case management funds.

In its December, 2002, meeting, the Joint Committee on Finance did not take any action on the income augmentation plan that was submitted to the Committee. Therefore, costs that were not exclusively related to the operational costs of augmenting federal income or related to activities previously approved by the Legislature and the Committee were not approved. This results in a balance of \$12,719,900 in available funds. There are no federal restrictions relating to the use of income augmentation funds. Consequently, the state can use these funds for any purpose. Until the funds are allocated, they will remain in the income augmentation appropriation in DHFS.

I hope that this information is helpful to you. Please do not hesitate to contact us if you need any further assistance.

JLS/YMO/sas



STATE OF WISCONSIN
BOARD ON AGING AND LONG TERM CARE
1402 Pankratz Street, Suite 111
Madison, WI 53704-4001
Ombudsman Helpline (800) 815-0015
Medigap Helpline (800) 242-1060
Fax (608) 246-7001
<http://longtermcare.state.wi.us>

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A Proposal for Extending Long Term Care Ombudsman Program Services To Residents of Residential Care Apartment Complexes

Dating from the time when the concept of Residential Care Apartment Complexes (RCACs) was first placed in Wisconsin statutes, there has been some degree of general support for the idea of affording residents of these facilities the benefit of Long Term Care Ombudsman services. Prior Legislatures have considered this proposal and rejected it, stating that the primary reason for not expanding the advocacy services of the Ombudsman to RCACs was fiscal in nature.

The Board on Aging and Long Term Care has received numerous contacts from residents of these facilities seeking advocacy assistance over the course of the past several years, and complaints lodged with the DHFS office in charge of registering and certifying RCACs have been steadily increasing. The department is unable, by statute and as a function of resources, to attend to these complaints in the same way as complaints against nursing homes or CBRFs are handled. It is apparent that there are many RCAC residents who would benefit greatly from having Ombudsman services made available to them.

The number of facilities has been growing at a rapid rate since RCACs were first created as a distinct provider type. [See Att. 1 & 2] From a starting point of 21 facilities registered or certified during the first year (1997) to a current complement of 128 complexes (as of July 2002), the increase in the availability of this sort of living arrangement for the elderly is a logical response to growing demand created by an aging population and pressures exerted by declining capacity of other provider types. Perhaps surprisingly, the distribution of these facilities is not focused exclusively in the Milwaukee region. [See Att. 3] While there are more facilities in the Southeast corner of the state (40 of the total 128), there are 28 facilities in the Northeast (Green Bay/Fox Valley) region, 25 in the Southern (Madison) region, and 23 in the Western (Eau Claire) region. Even the far north is represented with a total of 12 facilities in that area. The total number of facilities in each of the regions is generally consistent with the distribution of the general population and it does not appear to be the case that local economic or other factors will slow the growth trend any time soon.

There are a total of 5,369 apartments spread across Wisconsin, the majority of which (perhaps 90%) are believed to be single-occupancy units. According to estimates from the DHFS regulators, there may be as many as 5,800 total residents of RCAC assisted living apartments in Wisconsin as of 30 Aug 2002.

The Long Term Care Ombudsman Program has, since it was evaluated by the Institute of Medicine in a 1995 study entitled *Real People, Real Problems*, consistently asserted that the optimum ratio of Ombudsmen to potential clients was 1 : 2,000. Using this figure, an additional 3.0 FTE would be needed statewide to permit the staff of the Program to adequately serve the current RCAC population.

At a projected cost per FTE of \$50,000 per year to account for salary, fringe benefit, and office expenses, at least \$150,000 will be required annually to support the extension of the Long Term Care Ombudsman Program into the realm of Residential Care Apartment Complexes.

To fully fund this proposal, a per unit, per year fee would be assessed on all registered and certified RCACs. This fee, initially set at \$28 per unit, would be collected by DHFS from all RCAC facilities and transferred to BOALTC.

Total biennial cost of this program expansion would be \$300,000 PR.

This proposal has been requested, and is supported by the Statewide Long-Term Care Council, the Coalition of Wisconsin Aging Groups, and AARP of Wisconsin.

4/1/03 Rep Kresick, C. Morgan, G. Poterke, Jessica Staller,
Sue Schroeder

DHFS - can capture FFP for persons funded through
waiver programs who are in assisted living -
are moving oversight to AFL's to capture this
FFP - get new fed dollars for AFL oversight
So 8 positions moved from n.h. are bec. of closures

The match they're ~~expending~~ ~~getting~~ for NH's secures the
FFP

They need 8 more positions - they have enough
st money in ALFs to get FFP - are trying to get
75% FED - will need 8 new position authority - in
DOA under 16.505

DHFS is approaching regulation w/ compliance + tech asstce.

Need stat author. to regulate

For C-BRFs, interp. is must be there every 2 years;
annual wd be better - wd. need (38.9 FTE)

Providers' concern: getting n-h-type regulatory authority
Industry is, however, caring for more seriously ill and, under
the waiver, caring for people who are elig. for nh's.

Feds are leaving reg. of ALFs to states, but demand some
regulation

Differences: consumer choice, risk agreements

Forfeitures - Surcharge wd help admin costs related to
enforcement actions (need statements of
deficiency)

6% surcharge wd get 28,500 to fund 58%
of enforcement

Subbudget? - Check

Are also looking in budget bill to increase the forfeiture

DHFS thinks the \$1000 forfeiture is not enough (\therefore the budget proposal)

DHFS uses "fiscal wherewithall" in applying forfeiture amounts — that's why they want the range

State enforcement activity does not capture FFP

Use of surcharge to fund FTE in budget

Probably need 60,000 for enforcement FTEs

She wants a tie betw/ surcharge + assessing + collecting forfeitures

* up front payment — see n.h.'s ~~PP~~ in states (if pay up front, get 35% reduction) — mirrored system)

Recommendations on staffing — want = no. of nurses to not-nurses (licensing specialists $\&$: require h.s. educ. only); addit. of nurses is important bec. of rising acuity levels + disparate kinds of need)

She wants: nurses + health services specialists (doctors, SWs, occ. therapists, etc.)

Wants to require preparation —

- Echoes federal prescriptive requirements?

She will get back w/ recommendations

Annual inspection

Now: \$475,000/year forfeitures imposed (not necessarily paid)

DHFS supports ombudsmen in ALFs.

DHFS also wants changes in ch. 50:

Providers have 60 days to file

Wants "fit and qualified" - are worried about fin. unstable providers - is working its way through DHFS: provider community won't object

See HFS 83 - fit + qualified

Kennedy, Debora

From: Moran, Christian
Sent: Tuesday, June 24, 2003 2:22 PM
To: Kennedy, Debora
Subject: Revisions to LRB 0290/1

Debora:

Attached are additions Peggy would like to make to LRB 0290/1. These provisions were prepared by Bill Donaldson at BOALTC.

Just call with any questions.

Christian
Peggy Krusick's office
6-1733



RCAC proposal.doc

- Create language in § 50.034(3)(e) to require posting of notice to residents of availability of BOALTC Ombudsman advocacy services.

[similar to language in § 50.035(6) and § 50.04(2v)(a)]

- Create language in § 50.034 to establish a funding mechanism to support advocacy by the Long Term Care Ombudsman Program in RCACs.

50.034(9) Assessment on occupied units.

(1) To fund the expense of providing Long Term Care Ombudsman Program services to residents of residential care apartment complexes, there is imposed on occupied units of each certified or registered facility, an assessment that shall be deposited in a fund appropriated to DHFS and that is \$28 per calendar month per unit. The assessment shall be on the average number of occupied units of a facility for the calendar month previous to the month of assessment, based on the census computed and reported by the facility and verified by the department.

(2) By the end of each month, each residential care apartment complex shall submit to the department the average census and the amount due under sub. (1) for each occupied unit of the residential care apartment complex for the month preceding the month during which the census and payment are being submitted. The department shall verify the census and, if necessary, make adjustments to the payment, notify the facility of changes in the census or payment and send the facility an invoice for the additional amount due or send the residential care apartment complexes a refund.

(3) Sections 77.59 (1) to (5), (6) (intro.), (a) and (c) and (7) to (10), 77.60 (1) to (7), (9) and (10), 77.61 (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the assessment under this section.

(4) (a) The department shall levy, enforce and collect the assessment under this section and shall develop and distribute forms necessary for levying and collection.

(b) The department shall promulgate rules that establish procedures and requirements for levying the assessment under this section.

(c) The funds collected as a result of this assessment are to be distributed to BOALTC under a contract established between DHFS and BOALTC for the purpose of providing Long Term Care Ombudsman Program advocacy services to residents of residential care apartment complexes.

(5) (a) An affected residential care apartment complexes may contest an action by the department under this section by submitting a written request for a hearing to the department within 30 days after the date of the department's action.

(b) Any order or determination made by the department under a hearing as specified in par. (a) is subject to judicial review as prescribed under ch. 227.

- Create language in § 50.034 to prohibit retaliation or discrimination against residents who communicate with BOALTC or on whose behalf such communication is made.

50.043(3)(f) No person may intentionally retaliate or discriminate against any resident or employee who contacts or provides information to or on whose behalf another person contacts or provides information to any representative of the office of the long-term care ombudsman under s. 16.009 (4).



By Aug. 1 if possible
State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0290/F2

DAK:jld

D-NOTE

2003 BILL

LPS -
CHECK
auto refs

under the
long-term care
Ombudsman Program, ✓

REGENERATE

✓
imposing a monthly
assessment on occupied
apartments of residential
care apartment
complexes, requiring
the exercise of rule-making
authority, and making
an appropriation

- 1 AN ACT to create 16.009 (1) (em) of the statutes; relating to: authorizing access
2 by the long-term care ombudsman or his or her representative to a client or
3 resident in a residential care apartment complex. ✓

Analysis by the Legislative Reference Bureau

Under current law, the long-term care ombudsman or his or her designated representative may enter a long-term care facility at any time, without notice, and have access to clients and residents of the facility. "Long-term care facility" is defined to be a nursing home, a community-based residential facility, a place in which care is provided under a continuing care contract, a swing bed in an acute care or extended care facility, or an adult family home. The ombudsman or representative may communicate in private with a client or resident, review records with consent of the client or resident or his or her legal counsel, and have access to records of the long-term care facility or of the the Department of Health and Family Services (DHFS) concerning regulation of the long-term care facility.

Also under current law, residential care apartment complexes are licensed and otherwise regulated by DHFS. A "residential care apartment complex" is defined as a place where five or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen with a stove, and individual bathroom, sleeping and living areas, and that provides to a resident not more than 28 hours per week of supportive, personal, and nursing services. ✓

This bill expands the definition of a long-term care facility, for purposes of activities by the long-term care ombudsman or his or her designated representative, to include residential care apartment complexes. ✓

INSERT A →

residential

certified
or
registered

BILL

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 16.009 (1) (em) ✓ of the statutes is created to read:
2 16.009 (1) (em) 7. A residential care apartment complex, as defined in s. 50.01
3 (1d).

4

(END)

INSERT 2-3 ✓

D-NOTE

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0290/2ins
DAK:jld:jf

INSERT A

The bill imposes an assessment on each residential care apartment complex of \$28 per calendar month per occupied apartment, based on the previous month's census, which must be computed and reported by the complex to DHFS, beginning with the month of March 2004. The assessment must be enforced and collected by DHFS and deposited in the general fund. The bill makes an appropriation of general purpose revenues for expenditure by the Board on Aging and Long-Term Care for activities under the Long-Term Care Ombudsman Program in residential care apartment complexes.

INSERT

X

INSERT 2-3

SECTION 1. 20.432 (1) (b) of the statutes is created to read:

20.432 (1) (b) *Activities in residential care apartment complexes.* The amounts in the schedule for long-term care ombudsman program activities in residential care apartment complexes.

SECTION 2. 50.034 (9) of the statutes is created to read:

50.034 (9) **ASSESSMENT ON OCCUPIED APARTMENTS.** (a) In this subsection, "complex" means a certified or registered residential care apartment complex.

(b) For the privilege of doing business in this state, there is imposed on all occupied apartments of a complex an assessment that shall be deposited in the general fund and that is \$28 per calendar month per occupied unit. The assessment shall be on the average number of occupied apartments of a complex for the calendar month previous to the month of the assessment, based on a census computed and reported by the complex to, and verified by, the department.

(c) By the end of each month, a complex shall submit to the department the average census and the amount due under par. (a) for each occupied apartment of the complex for the month preceding the month during which the census and payment are being submitted. The department shall verify the census and, if necessary, make

↓

INSERT 2-3 cont

1 adjustments to the payment, notify the complex of changes in the census or payment,
2 and send the complex an invoice for the additional amount due or send the complex
3 a refund.

4 (d) Sections 77.59 (1) to (5), (6) (intro.), (a) and (c), and (7) to (10), 77.60 (1) to
5 (7), (9), and (10), 77.61 (9) and (12) to (14), and 77.62, as they apply to the taxes under
6 subch. III of ch. 77, apply to the assessment under this subsection.

7 (e) 1. The department shall enforce and collect the assessment under this
8 subsection and shall develop and distribute forms necessary for levying and
9 collection.

10 2. The department shall promulgate rules that establish procedures and
11 requirements for levying the assessment under this subsection.

12 (f) 1. An affected complex may contest an action by the department under this
13 subsection by submitting a written request for a hearing to the department within
14 30 days after the date of the department's action.

15 2. An order or determination made by the department under a hearing as
16 specified in subd. 1. is subject to judicial review as prescribed under ch. 227.

17 **SECTION 3. Nonstatutory provisions.**

18 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES; RULES.

19 (a) The department of health and family services shall submit in proposed form
20 the rules required under section 50.034 (9) (e) 2. of the statutes, as created by this
21 act, to the legislative council staff under section 227.15 (1) of the statutes no later
22 than the first day of the 4th month beginning after the effective date of this
23 paragraph.

24 (b) Using the procedure under section 227.24 of the statutes, the department
25 of health and family services may promulgate rules required under section 50.034



INSERT 2-3
CONT

1 (9) (e) 2. of the statutes, as created by this act, for the period before the effective date
2 of the rules submitted under paragraph (a), but not to exceed the period authorized
3 under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24
4 (1) (a), (2) (b), and (3) of the statutes, the ~~commissioner~~ is not required to provide
5 evidence that promulgating a rule under this paragraph as an emergency rule is
6 necessary for the preservation of the public peace, health, safety, or welfare and is
7 not required to provide a finding of emergency for a rule promulgated under this
8 paragraph.

9 **SECTION 4. Initial applicability.**

10 (1) ASSESSMENTS ON RESIDENTIAL CARE APARTMENT COMPLEXES; RULES. The
11 treatment of sections 50.034 (9) of the statutes first applies to a census computed and
12 reported by a residential care apartment complex for March 2004.

13 **SECTION 5. Effective date.**

14 (1) This act takes effect on March 1, 2004.

department

2003

INSERT X
(insert to Ins 2-3)

File With Statute **20.005 (3)** Schedule

LRB _____ / _____

\$\$\$ SCHEDULE

In the component bar:

For the action phrase, execute: create → action: → ch20

For the table layout, execute: create → <Table> → \$sched

SECTION #. 20.005 (3) (schedule) of the statutes: at the appropriate place,
insert the following amounts for the purposes indicated:

2003-04

2004-05

20. 432 Board on aging and
long-term care ✓
.....

(1) IDENTIFICATION OF THE NEEDS OF
THE AGED AND DISABLED ✓
.....

(b) Activities in
residential care
.....

apartment complexes GPR A -0- -0-
.....

20.
.....

(end ins X)

()
.....

()
.....
.....

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0290/2dn
DAK/jld:jf

stays

To Representative Krusick:

1. Clearly, the language proposed for s. 50.034 (9), which you provided me, was modeled after s. 50.14, 2001 stats. The following are questions or comments about the proposed language and the ways in which my draft differs from it:

a. Please note that 2003 Wisconsin Act 33 (the biennial budget act) changed s. 50.14 to apply the assessment on *all* beds of a nursing home, not just occupied beds. Would you be interested in making this change for s. 50.034 (9) in this bill?

b. Although the proposed language states, as a reason for the assessment, "[T]o fund the expense of providing Long Term Care Ombudsman Program services to residents of residential care apartment complexes," I instead adhered to "For the privilege of doing business in this state," which is standard language used for imposition of a tax.

c. Although the language proposed referred to deposit of assessment moneys "in a fund appropriated to DHFS," I understood the request to be providing money to the Board on Aging and Long-Term Care for expanded advocacy. Therefore I created s. 20.432 (1) (b) (for the BOALTC), rather than an appropriation under s. 20.435 (for DHFS). Since s. 20.432 (1) (b) is a sum certain, it will be essential to have a specific dollar figure in the schedule; if you are aware of the exact amount I can insert it in a redraft, or it can be done by amendment after introduction.

2. I did not include in this draft the language proposed to prohibit retaliation or discrimination; it is redundant to that in s. 50.07 (1) (e) and (em), stats., which apply to the subchapter as a whole (of which s. 50.034, stats., is a part), not just to nursing homes. Also, the penalty under s. 50.07 (2), stats., applies. However, this brings up a separate point: s. 50.07 (1) (e) and (em), stats., prohibit intentional retaliation or discrimination for "initiating, participating in, or testifying in an action for any remedy authorized under this subchapter." Section 50.09, stats. (rights of residents in certain facilities) sets forth a number of rights of residents of nursing homes or community-based residential facilities. Would you want residents of residential care apartment complexes to be included in this section, so that their complaints could be prosecuted?

3. Please note that I have put an effective date of March 1, 2004, on this bill. The delayed effective date is necessitated by the fact that s. 50.034 (9) (e) 2. requires rules

promulgation for procedures and requirements for DHFS to collect the assessments. In order to speed up the process, I have authorized promulgation of emergency rules without a finding of emergency ^{em} if extensions are allowed under s. 227.24 (2) (c) and (2), these could be effective for a total of 270 days before permanent rules are promulgated. If this bill does not pass before January 1, 2004, the date should be changed accordingly. Does this comport with your intent?

Please let me know if you have questions or want any changes made to this draft.

Debra A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

☒ Do you want an immediate effective date for s. 16.009 (1) (em)?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0290/2dn
DAK:jld:jf

August 1, 2003

To Representative Krusick:

1. Clearly, the language proposed for s. 50.034 (9), which you provided me, was modeled after s. 50.14, 2001 stats. The following are questions or comments about the proposed language and the ways in which my draft differs from it:

a. Please note that 2003 Wisconsin Act 33 (the biennial budget act) changed s. 50.14 to apply the assessment on *all* beds of a nursing home, not just occupied beds. Would you be interested in making this change for s. 50.034 (9) in this bill?

b. Although the proposed language states, as a reason for the assessment, "[T]o fund the expense of providing Long Term Care Ombudsman Program services to residents of residential care apartment complexes," I instead adhered to "For the privilege of doing business in this state," which is standard language used for imposition of a tax.

c. Although the language proposed referred to deposit of assessment moneys "in a fund appropriated to DHFS," I understood the request to be providing money to the Board on Aging and Long-Term Care for expanded advocacy. Therefore I created s. 20.432 (1) (b) (for the BOALTC), rather than an appropriation under s. 20.435 (for DHFS). Since s. 20.432 (1) (b) is a sum certain, it will be essential to have a specific dollar figure in the schedule; if you are aware of the exact amount I can insert it in a redraft, or it can be done by amendment after introduction.

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promulgation for procedures and requirements for DHFS to collect the assessments. In order to speed up the process, I have authorized promulgation of emergency rules without a finding of emergency — if extensions are allowed under s. 227.24 (2) (c) and (2), these could be effective for a total of 270 days before permanent rules are promulgated. If this bill does not pass before January 1, 2004, the date should be changed accordingly. Does this comport with your intent? Do you want an immediate effective date for s. 16.009 (1) (em)?

Please let me know if you have questions or want any changes made to this draft.

Debora A. Kennedy
Managing Attorney
Phone: (608) 266-0137
E-mail: debora.kennedy@legis.state.wi.us

Kennedy, Debora

From: Moran, Christian
Sent: Monday, August 25, 2003 1:50 PM
To: Kennedy, Debora
Subject: Revisions to LRB 290/2

Debora--

Below are answers to the questions you posed in your drafter's note for this bill draft. The only question that remains is in #3, where you ask if there should be an immediate effective date for s. 16.009 (1) (em). What is the benefit of doing this? If you believe this is a good idea, please make this change.

Finally, please add a provision that requires RCACs to post notices informing residents of the availability of ombudsman services.

Bill Donaldson says the citations to the existing "notice" language are

50.035(6) for CBRFs
50.04(2v) for Nursing Homes

Thanks. Please call with any questions.

Christian
6-1733

1. Clearly, the language proposed for s. 50.034 (9), which you provided me, was modeled after s. 50.14, 2001 stats. The following are questions or comments about the proposed language and the ways in which my draft differs from it:

a. Please note that 2003 Wisconsin Act 33 (the biennial budget act) changed s. 50.14 to apply the assessment on *all* beds of a nursing home, not just occupied beds. Would you be interested in making this change for s. 50.034 (9) in this bill?

Yes.

b. Although the proposed language states, as a reason for the assessment, "[T]o fund the expense of providing Long Term Care Ombudsman Program services to residents of residential care apartment complexes," I instead adhered to "For the privilege of doing business in this state," which is standard language used for imposition of a tax.

This is fine.

c. Although the language proposed referred to deposit of assessment moneys "in a fund appropriated to DHFS," I understood the request to be providing money to the Board on Aging and Long-Term Care for expanded advocacy. Therefore I created s. 20.432 (1) (b) (for the BOALTC), rather than an appropriation under s. 20.435 (for DHFS). Since s. 20.432 (1) (b) is a sum certain, it will be essential to have a specific dollar figure in the schedule; if you are aware of the exact amount I can insert it in a redraft, or it can be done by amendment after introduction.

The exact amount is not yet known.

2. I did not include in this draft the language proposed to prohibit retaliation or discrimination; it is redundant to that in s. 50.07 (1) (e) and (em), stats., which apply to the subchapter as a whole (of which s. 50.034, stats., is a part), not just to nursing homes. Also, the penalty under s. 50.07 (2), stats., applies. However, this brings up a separate point: s. 50.07 (1) (e) and (em), stats., prohibit intentional retaliation or discrimination for "initiating, participating in, or testifying in an action for any remedy

authorized under this subchapter." Section 50.09, stats. (rights of residents in certain facilities) sets forth a number of rights of residents of nursing homes or community-based residential facilities. Would you want residents of residential care apartment complexes to be included in this section, so that their complaints could be prosecuted?

Yes.

3. Please note that I have put an effective date of March 1, 2004, on this bill. The delayed effective date is necessitated by the fact that s. 50.034 (9) (e) 2. requires rules promulgation for procedures and requirements for DHFS to collect the assessments. In order to speed up the process, I have authorized promulgation of emergency rules without a finding of emergency - if extensions are allowed under s. 227.24 (2) (c) and (2), these could be effective for a total of 270 days before permanent rules are promulgated. If this bill does not pass before January 1, 2004, the date should be changed accordingly. Does this comport with your intent? Do you want an immediate effective date for s. 16.009 (1) (em)?

The delayed effective date is fine. What is the benefit of having an immediate effective date for s. 16.009 (1) (em)?